



Benjamin N. Cardozo School of Law, Yeshiva University

**TESTIMONY OF REBECCA BROWN, DIRECTOR OF STATE POLICY REFORM,  
INNOCENCE PROJECT,  
BEFORE THE MICHIGAN HOUSE JUDICIARY COMMITTEE  
RE: SB 152**

On behalf of the Innocence Project, thank you for allowing me to submit testimony before the Michigan House Judiciary Committee.

Since its U.S. introduction, forensic DNA testing has proven the innocence of 300 people who had been wrongly convicted of serious crimes. With the certainty of innocence that DNA provides, we can also be certain that something(s) went wrong in the process which led fact finders to believe beyond a reasonable doubt that the exonerated person was, in fact, guilty of the crime. The Innocence Project regards each DNA exoneration as an opportunity to review where the system fell short and identify factually-supported policies and procedures to minimize the possibility that such errors will impair justice again in the future. This testimony will address the electronic recording of custodial interrogations, an improvement that promises to help law enforcement in the criminal investigation process and assures that justice is served during the course of criminal proceedings.

*False “confessions” are far more prevalent than one might think.*

A false confession, admission, or dream statement was found to have contributed to over 25% of the 300 wrongful convictions in America proven by DNA testing, two of them here in Michigan – Nathaniel Hatchett and Eddie Joe Lloyd. Electronically recording custodial interrogations from Miranda onward removes serious questions about the “confession” in question, by enabling the finder of fact to

consider the most accurate presentation of the confession evidence at trial, thus narrowing the possibility of a wrongful conviction.

### *Ancillary Benefits of Recording Interrogations*

There are a number of ancillary benefits that can be achieved through the implementation of mandatory recording. A record of the interrogation can resolve disputes about the conduct of law enforcement officers—allegations of police misconduct can be disproven. Investigators will not have to focus upon writing up a meticulous account of the statements provided by the suspect, and may instead focus his attention on small details, such as subtle changes in the narrative, which he might have otherwise missed. Having a record of good interrogation techniques can be a useful training device for police departments, particularly as cases with distinctive characteristics come to light. Overburdened courts will welcome a huge reduction in defense motions to suppress unrecorded statements and confessions as well as pretrial and trial hearings focused upon establishing what transpired during the course of an interrogation.

The single best reform available to hinder the occurrence of false confessions, the mandatory electronic recording of interrogations, is being embraced by police departments around the country. Nineteen states, along with the District of Columbia, now require the recording of interrogations either through legislation or via court action, and the same is done in large metropolitan cities such as Phoenix, AZ; Los Angeles, San Diego, San Francisco and San Jose, CA; Denver, CO; Portland, OR; Austin and Houston, TX. Michigan should follow suit, taking the lead in instigating a reform whose innumerable benefits will undeniably bolster the investigations of criminal cases. Indeed, nearly fifty law enforcement agencies in Michigan have not waited for a mandate; having recognized the various benefits of this reform to law enforcement, these agencies already voluntarily record interrogations. What is needed now is uniformity in practice so that justice does not stop at any jurisdictional borders.

In the summer of 2004, Thomas P. Sullivan, the former U.S. Attorney for the Northern District of Illinois, published a report detailing police experiences with the recording of custodial interrogations. Researchers interviewed officers in 238 law enforcement agencies which have implemented the reform in 38 states and concluded, "virtually every officer with whom we spoke, having given custodial recordings a try, was enthusiastically in favor of the practice." (Sullivan, Thomas, "Police Experiences with Recording Custodial Interrogations." Report presented by Northwestern University School of Law's Center on Wrongful Convictions, p. 6.)

Mr. Sullivan has also drafted a model bill for the recording of interrogations, many provisions of which are present in SB 152. The bill carves out broad exceptions to recording interrogations that seek to protect law enforcement, while also ensuring that the best possible evidence is available to fact finders during the course of criminal proceedings. SB 152 represents a modest proposal. Rather than including a sanction that would suppress an unrecorded confession, this bill instead permits the confession evidence to be entered into evidence along with a jury instruction. As well, this legislation does not require the recording of all custodial interrogations, but focuses instead on major felony crimes. Both of these provisions seek to balance the interests of justice with very real and understandable law enforcement concerns. The resulting proposal is both fair and balanced and we strongly encourage its passage into law.

The Innocence Project applauds this committee for advancing this legislation and will gladly share its views on the provisions of the bill in more detail should that be of interest to the committee. Passage of SB 152 will assure protections to the innocent, which in turn will allow law enforcement to focus its attention on the apprehension of the true culprit. Less than ideal interrogation procedures have contributed to or been the main factor in more than one in five wrongful convictions of individuals later exonerated through DNA evidence. In each of these cases, the true perpetrator remained at large, able to commit additional crimes. The mandatory recording of interrogations is a reform whose time has come.



I thank you for the opportunity to speak to you about this important issue today. We believe that implementation of the recording of interrogations through the passage of SB 152 will serve the interests of law enforcement, while promising the fair administration of justice. Please contact me if I may offer any information regarding the national landscape. Thank you again for your consideration of this critical legislation.